



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-0674

Dear Ms. Armstrong:

You have asked for reconsideration of Open Records Letter No. 96-282 (1996). You have also received another request for information that concerns essentially the same information that was at issue in Open Records Letter No. 96-282 (1996). This office determined in that informal decision that the statements of witnesses to and alleged victims of sexual harassment must be de-identified and released. We have assigned your request for a decision and for a reconsideration ID#s 39378 and 39268.

You assert that release of the statements at issue would violate certain individuals' privacy rights under section 552.101 or section 552.102. The test to determine whether information is private and excepted from disclosure under either section 552.101 or section 552.102 is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). You also assert that common-law privacy, as construed in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.-El Paso 1992, writ denied) prohibits release of the statements at issue.

In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to records of an investigation of alleged sexual harassment against a public servant. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry conducting the investigation which summarized the allegations and findings. *Id.* 840 S.W.2d at 525. The court stated that, under the rationale of *Industrial Foundation* and *Hubert* "the names and the details of witnesses' individual statements (which would probably disclose their identities to any reasonably diligent investigator) were presumptively exempt from disclosure." *Ellen*, 804 S.W.2d at 525.

However, the court also recognized that the public had a legitimate interest in a full disclosure of the facts of the alleged harassment that lead to the public servant's forced resignation. *Id.* Recognizing the public's interest and the privacy interests of the witnesses, the court concluded that releasing the board's summary and the accused public servant's statement were sufficient:

Here, all the pertinent information regarding the charges leading to Mr. Ellen's resignation were included in either his responsive affidavit or the conclusions of the board of inquiry, both of which are public. The individual affidavits of witnesses, given under threat of internal discipline, add nothing real to the public concern with this investigation. We conclude that the public does not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released.

Id.

The records submitted to this office included investigation information relating to complaints of sexual harassment against a public employee. In reviewing the information you released to the requestor, it was apparent that you had not disclosed adequate summaries of the allegations and findings. Under the guidelines set out in *Ellen*, had such summaries been released, the victim's and witnesses' statements must then be withheld in their entirety. The court in *Ellen* recognized that there is a legitimate public interest in sexual harassment investigations and the outcome of such investigations. Thus, we believe that de-identified victim and witness statements must be released when the governmental body has not provided an adequate summary of the investigation and findings. We advised you that since you did not have adequate summaries of the investigations and findings, the victims' and witnesses' statements must be de-identified and released.

It is our understanding from your letters that you are willing to create and provide to the requestor summaries outlining the allegations and findings, rather than release the victims' and witnesses' statements. Assuming you provide the requestor adequate summaries of the allegations and findings, the victims' and witnesses' statements must then be withheld from disclosure. However, if adequate summaries are not provided, you must release the statements at issue in accordance with our markings.

You have also asked this office to reconsider our decision concerning the release of information in Exhibit C that you contend could subject the county to liability for libel. We have marked information in Exhibit C that is excepted from disclosure under common-law privacy. However, we refuse to reconsider our decision concerning the withholding of information that you assert may be defamatory.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 39378

Enclosures: Submitted documents

cc: Ken Martin
Editor
In Fact News
P.O. Box 49990
Austin, Texas 78765
(w/o enclosures)